

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____	x	
DIOMED, INC.,	:	
	:	
Plaintiff,	:	
	:	Civil Action No. 04-cv-102157 (NMG)
v.	:	
	:	
NEW STAR LASERS, INC.	:	
d/b/a COOLTOUCH INC.,	:	
	:	
Defendant.	:	
_____	x	

**MOTION OF ENDOLASER ASSOCIATES, L.L.C. TO DISMISS PLAINTIFF'S
COMPLAINT (1) FOR LACK OF SUBJECT MATTER JURISDICTION; AND
(2) FOR FAILURE TO STATE A CLAIM**

Endolaser Associates, L.L.C. ("Endolaser") hereby moves this Court, for an order, pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), dismissing the complaint of Diomed, Inc. ("Diomed") on the grounds that Endolaser, as a co-owner of the patent which is the subject of the above-captioned infringement action, declines to be joined as a plaintiff and objects to Diomed continuing to maintain this action and for such other relief as the Court deems just and proper. The grounds for this motion are more fully set forth in the accompanying Memorandum of Law, the Declaration of Gordon Z. Novod, and the exhibits attached thereto.

ORAL ARGUMENT REQUESTED

Endolaser respectfully requests oral argument pursuant to Local Rule 7.1(d).

[Signature Page to Follow]

Respectfully Submitted,

/s/ Charles A. Dale III

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-and-

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ATTORNEYS FOR ENDOLASER
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Dated: August 22, 2008

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent via email and/or first class mail to those indicated as non registered participants

/s/ Charles A. Dale
Charles A. Dale III

LOCAL RULE 7.1(A)(2) CERTIFICATION

Pursuant to Local Rule 7.1(a)(2), the undersigned certifies that counsel for Endolaser Associates, L.L.C., Gordon Z. Novod conferred with counsel about the filing of this motion, but was unable to resolve the instant dispute.

/s/ Charles A. Dale III
Charles A. Dale III